

OUTLINE OF THE CRIMINAL JUSTICE ACT 18 U.S.C. § 3006A

Enacted in the wake of Gideon v. Wainwright¹ decision by the United States Supreme Court. Gideon extended right to counsel to criminal trial. The Sixth Amendment to the United States Constitution requires that the indigent be afforded with counsel.

Structure of CJA

“ 3006A (a) Choice of plan. Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. . . . ”

Mandatory appointment

- Felony or Class A misdemeanor
- Juvenile
- Probation, supervised release violation
- Mental condition hearing 18 USC § 4241
- In custody as a material witness
- Entitled under 6th A
- Faces loss of liberty
- Entitled under 18 USC § 4109 (transfer of prisoner to foreign country)

Discretionary Appointment

- Class B or C misdemeanor, or infraction for which jail is authorized;
- Petitioner for habeas relief under 28 USC §§ 2241, 2254, 2255

¹ 372 U.S. 335 (1963)

Panel of attorneys established by plan. Rhode Island plan has both training and experience requirements. May appoint private attorneys or may appoint from a defender organization. Rhode Island, effective March 10, 2003, established a federal defender office, a branch of the Boston Federal Public Defender's office. Establishment of federal defender office has resulted in a reduction in the CJA Panel from about 40 attorneys to 20.

Current hourly rate: \$90 per hour for in court and out of court time.

Case Maximums:	Felony	\$5,200
	Misdemeanor	\$1,500
	Appeals	\$3,700

Waiver of case maximums: in cases of "extended" or "complex" representation. Request before Magistrate Judge.

Disclosure of fees Upon public inquiry may disclose amounts in twelve categories, court proceedings, research, etc... Court shall redact details in voucher so as to only disclose totals for each category. Court may make a more limited disclosure to protect rights of the defendant. 3006(d)(4) provides a process for fee disclosure including notice to defense counsel.

Services other than counsel 18 USC § 3006A (e) provides for defense counsel, in an ex parte proceeding, to request other services, such as investigative, psychiatric, forensic, if the amount is to exceed \$300. Less than \$300 counsel need not obtain prior approval. Case maximum is \$1,000, exclusive of

reimbursement of expenses. Magistrate may make an approval of an excess amount if necessary for fair compensation for a case of "unusual character or duration. "

Defender organization 18 USC § 3006A (g)

Minimum of 200 appointments

Two adjacent districts (Mass, N.H. and R.I.) may combine appointments.

Judicial Council of circuit must approve plan.

Two types of defender organizations.

Federal Public Defender Organization or Community Defender Organization

Fed. Pub. Def. A supervising public defender has a term of four years. Rate of compensation is at level of a United States Attorney. Assistants paid at a rate that Assistant United States Attorneys are paid.

Community Def. Org. Non profit organization. Judicial Conference must receive annual report.

Malpractice and negligence suits. The Director of the Administrative Office of the United States Courts shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for Fed. Pub. Def. , Comm. Def. Org. claims made for actions taken in the scope of attorney's office or employment.

Significant cases:**Habeas -INS Detainee**

Chamblin v. INS, 176 F.Supp.2d 99 (D.N.H. 2000)

CJA authorizes appointment of counsel to represent INS detainee filing a petition for habeas corpus.

Fee Determinations

U.S. v. Smith, 76 F. Supp.2d 767 (S.D. Tx. 1999)

Attorney fee determinations are not appealable.

Civil Forfeiture

Claimant in civil forfeiture proceeding had no Sixth Amendment right to counsel to challenge forfeiture and no entitlement to counsel under CJA

U.S. v. 87 Blackheath Road, 201 F.3d 98 (2d Cir. 2000).